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Colonial Metal Spinning and Stamping Co., Inc. and Regency Metal Stamping Co., Inc., and its alter egos and successors, Resolution Realty Holding Co., Inc., Robinson Lamp Parts, Inc., at Casting Corp., a/k/a A&T Casting, Inc., All American Casting and Stamping Co., Inc., Meyda Steel, Inc., Continental Metal Stamping, Inc., Anton Novil, Inc., Isaac Tyrnauer, Chana Kepecs and Anshel Tyrnauer and Metal Spinners and Silver Plated Hollowware Workers' Union, Local 49E, Service Employees International Union, AFL-CIO and its successor Local 74, Service Employees International Union, AFL-CIO Cases 29-CA-15562, 29-CA-15813, and 29-CA-15964

July 18, 2001

SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS
LIEBMAN AND WALSH

On January 7, 1993, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering Respondent Colonial Metal Spinning and Stamping Co., Inc., and its alter ego Regency Metal Stamping Co., Inc. (collectively Respondents Colonial and Regency), their officers, agents, successors, and assigns, to make whole unit employees Carlos Asang and Carlos Padin for any loss of earnings and other benefits suffered by them because of the discrimination against them in violation of the National Labor Relations Act; to comply with the terms of the collective-bargaining agreement between Respondents Colonial and Regency and the Metal Spinners and Silver Plated Hollowware Workers' Union, Local 49E, Service Employees International Union, AFL-CIO and its successor Local 74, Service Employees International Union, AFL-CIO, by making the required monthly payments to the Retirement Fund and Insurance Fund; and to make whole the unit employees and the Funds for any losses they may have suffered as a result of the Respondents' failure to make the required payments. On April 13, 1993, the United States Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order.²

A controversy having arisen over the amount of back-pay due, on February 11, 1998, the Regional Director for Region 29 issued a compliance specification and notice

of hearing alleging the amount due under the Board's Order, and notifying the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Thereafter, on June 9, 1998, the Board issued a Supplemental Decision and Order that fixed the amounts owed by Respondents Colonial and Regency under the court's April 13, 1993 judgment.³ On March 24, 1999, the United States Court of Appeals for the Second Circuit entered a Supplemental Judgment enforcing in full the Supplemental Order of the Board.

A further controversy has now arisen as to whether the following corporate entities should be jointly and severally required to comply with the Court's Supplemental Judgment: Resolution Realty Holding Co., Inc., Robinson Lamp Parts, Inc., AT Casting Corp. a/k/a A&T Casting, Inc., All American Casting and Stamping Co., Inc., Meyda Steel, Inc., Continental Metal Stamping, Inc., and Anton Novil Inc. A controversy has also arisen over whether the following individuals should be jointly and severally required to comply with the court's Supplemental Judgment: Isaac Tyrnauer, Chana Kepecs and Anshel Tyrnauer. On April 11, 2001, the Regional Director for Region 29 issued a notice of hearing in the above-captioned case, alleging as follows:

At all material times, Isaac Tyrnauer and Anshel Tyrnauer have been the officers and shareholders of Respondents Colonial and Regency, and have had full knowledge of their affairs.

At all material times, Resolution Realty Holding Co., Inc. (Resolution), a domestic corporation, has had its principal place of business located at 133 North 8th Street, Brooklyn, New York, or at 18 Market Street, Paterson, New Jersey. At all material times, Resolution has existed for the purpose of buying, selling, renting, owning, holding and operating real property. At all material times, Isaac Tyrnauer, his wife Chana Kepecs, and Anshel Tyrnauer have been the officers and shareholders of Resolution and have been personally responsible for the corporate policies and the operations of Resolution.

On September 30, 1996, Universal Marketing Concepts, Inc., f/k/a Pals Associates, Inc. d/b/a Colonial Metal Spinning and Stamping Co., Inc. conveyed to Resolution the real property located at 133-141 North Seventh Street, 142-144 North 8th Street and 115 Berry Street, Brooklyn, New York.

Respondents Colonial and Regency established Resolution for the purpose of holding the real property located at 133-141 North Seventh Street, 142-144 North 8th Street and 115 Berry Street, Brooklyn, New York. The business of Respondents Colonial and Regency operated

¹ 310 NLRB 21.

² No. 93-4066.

³ 325 NLRB No. 163.

at the addresses referred to above at the time they committed the adjudicated unfair labor practices that resulted in the Board Order and the Judgment of the Court of Appeals as set forth above. At all material times, Respondents Colonial and Regency and Resolution have been affiliated business enterprises with common officers, ownership, operators, premises and facilities.

Based on the above, Respondents Colonial and Regency and Resolution have been a single employer within the meaning of the Act, and Resolution has been an alter ego of Respondents Colonial and Regency. Therefore, Resolution is jointly and severally liable to comply with the Board's Supplemental Order and the Supplemental Judgment of the Court of Appeals.

Robinson Lamp Parts, Inc. (Robinson) is a domestic corporation with its principal place of business located at 18 Market Street, Patterson, New Jersey. On about March 25, 1998, Respondents Colonial and Regency and Robinson began the process of merging their operations. In or around May 1998, Respondents Colonial and Regency transferred their operations, including machinery, equipment, and inventory from 133 North 8th Street, Brooklyn, New York, to 18 Market Street, Patterson, New Jersey, the premises occupied by Robinson. Since about May 1998, Robinson has continued to operate the business of Respondents Colonial and Regency and employed as a majority of its employees individuals who were previously employed by Respondents Colonial and Regency.

On August 5, 1998, Resolution conveyed the properties located at 133-141 North Seventh Street, 142-144 North 8th Street and 115 Berry Street, Brooklyn, New York, and Resolution issued a purchase money mortgage to the purchaser. On October 23, 1999, the mortgagee repurchased the purchase money mortgage from Resolution for \$243,000. Resolution distributed the proceeds of the purchase and the purchase money mortgage to the officers and shareholders of Respondents Colonial and Regency and Resolution, Isaac Tyrnauer, his wife Chana Kepecs, and Anshel Tyrnauer, and to the single-integrated enterprise described below, and their creditors.

AT Casting Corp. a/k/a A&T Casting, Inc. (AT) is a domestic corporation with its principal place of business located at 18 Market Street, Patterson, New Jersey. All American Casting and Stamping Co., Inc. (All American) is a domestic corporation with its principal place of business located at 18 Market Street, Patterson, New Jersey. In or around November 1999, Robinson and AT began doing business as All American. Since in or around December 1999, All American has continued to operate the business of Robinson with individuals who

were previously employed by Respondents Colonial and Regency at 18 Market Street, Patterson, New Jersey.

Meyda Steel, Inc. (Meyda) is a domestic corporation with its principal place of business located at 18 Market Street, Patterson, New Jersey. Continental Metal Stamping, Inc. (Continental) is a domestic corporation with its principal place of business located at 18 Market Street, Patterson, New Jersey. Anton Novil, Inc. (Novil) is a domestic corporation with its principal place of business located at 18 Market Street, Patterson, New Jersey.

At all material times, Isaac Tyrnauer and Anshel Tyrnauer have been the officers and shareholders of Robinson, AT, All American, Meyda, Continental, and Novil, and have been personally responsible for the corporate policies and all operations of Robinson, AT, All American, Meyda, Continental, and Novil.

At all material times, Respondents Colonial and Regency, Resolution, Robinson, AT, All American, Meyda, Continental, and Novil have been affiliated business enterprises with common officers, ownership, directors, management and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single-integrated business enterprise.

Based on their operations, Respondents Colonial and Regency, Resolution, Robinson, AT, All American, Meyda, Continental, and Novil constitute a single-integrated business enterprise and a single employer within the meaning of the Act, and Resolution, Robinson, AT, All American, Meyda, Continental, and Novil have been alter egos of Respondents Colonial and Regency.

By virtue of the facts that Respondents Colonial and Regency, Resolution, Robinson, AT, All American, Meyda, Continental, and Novil are a single integrated enterprise and a single employer, and that they share common officers and shareholders, Resolution, Robinson, AT, All American, Meyda, Continental, and Novil were put on notice of the actual liability in Board cases 29-CA-15562, 29-CA-15813, and 29-CA-15964, the Supplemental Board Order, and the Supplemental Judgment of the Court of Appeals, as set forth above.

Based on the conduct and operations described above, Resolution, Robinson, AT, All American, Meyda, Continental, and Novil have continued the employing entity with actual notice of the liability of Respondents Colonial and Regency and are legally obligated, as alter egos of Respondents Colonial and Regency and/or as successors of Respondents Colonial and Regency, to remedy the unfair labor practices of Respondents Colonial and

Regency, and therefore are jointly and severally liable to comply with the Supplemental Board Order and the Supplemental Judgment of the Court of Appeals.

At all material times, Respondents Colonial and Regency, Resolution, Robinson, AT, All American, Meyda, Continental, and Novil have been undercapitalized, have disregarded corporate form, have transferred corporate assets without fair consideration, have failed to maintain an arm's-length relationship between and among these corporations and have used corporate assets to pay personal expenses of Isaac Tyrnauer, Chana Kepecs and Anshel Tyrnauer.

Based on these facts, Isaac Tyrnauer, Chana Kepecs and Anshel Tyrnauer are each employers under the Act, and are alter egos of Respondents Colonial and Regency, Resolution, Robinson, AT, All American, Meyda, Continental, and Novil, and therefore, are jointly and severally liable to comply with the Supplemental Board Order and the Supplemental Judgment of the Court of Appeals.

Although properly served with copies of the notice of hearing, all the Respondents failed to file an answer.⁴

On May 3, 2001, counsel for the General Counsel sent a letter by certified and regular mail to each of the Respondents and to Michael Halberstam, counsel for all Respondents except Chana Kepecs and Anshel Tyrnauer, advising the Respondents that no answer to the Notice of Hearing had been received and that unless an appropriate answer was filed by May 10, 2001, summary judgment would be sought.⁵ None of the Respondents filed an answer.

On May 14, 2001, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On May 18, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. None of the Respondents filed a response. The allega-

tions in the motion and in the notice of hearing are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the notice of hearing. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the Notice of Hearing to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due is as stated in the compliance specification and we will order payment by the Respondents of said amounts, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondents, Colonial Metal Spinning and Stamping Co., Inc. and Regency Metal Stamping Co., Inc., and its alter egos and successors, Resolution Realty Holding Co., Inc., Robinson Lamp Parts, Inc., AT Casting Corp., a/k/a A&T Casting, Inc., All American Casting and Stamping Co., Inc., Meyda Steel, Inc., Continental Metal Stamping, Inc., Anton Novil, Inc., Isaac Tyrnauer, Chana Kepecs and Anshel Tyrnauer, Brooklyn, New York, their officers, agents, successors, and assigns, jointly and severally are liable to comply with the Board's Supplemental Decision and Order, reported at 325 NLRB No. 163 (1998) (not reported in Board volumes), as enforced by the Supplemental Judgment of the United States Court of Appeals for the Second Circuit on March 24, 1999, and shall make whole the individuals, the Union and the Funds named below, by paying them the amounts specified, plus interest, and minus tax withholdings from the wage payments required by Federal, state, and local laws:

⁴ It appears that Respondent Anshel Tyrnauer refused to accept service of the notice of hearing when the United States Postal Service attempted to deliver it by certified mail, because no return receipt has been received. The copy of the notice of hearing that was sent by regular mail to Respondent Anshel Tyrnauer has not been returned by the Postal Service. This Respondent's failure or refusal to accept certified mail cannot serve to defeat the purposes of the Act. See *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Further, the failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *J&W Drywall Co.*, 308 NLRB 517, 518 (1992).

⁵ On May 8, 2001, Counsel Halberstam telephoned the counsel for the General Counsel and stated that Anshel Tyrnauer had received the May 3, 2001 letter but that Halberstam was not sure if he would be representing Anshel Tyrnauer. On May 10, Halberstam notified counsel for the General Counsel in a voice mail message that he was representing all of the Respondents except Chana Kepecs and Anshel Tyrnauer.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

Carlos Asang	\$55,644.25	Dues	<u>\$5879.25</u>
Carlos Padin	\$31,514.70	Total	\$275,352.76
Vacation Pay (as specified in Appendix C of the compliance Specification)	\$69,960.71	Dated, Washington, D.C. July 18, 2001	
Holiday Pay (as specified in Appendix D of the compliance specification)	\$56,930.72	<hr/> Peter J. Hurtgen, <hr/> Wilma B. Liebman, <hr/> Dennis P. Walsh,	<hr/> Chairman <hr/> Member <hr/> Member
Insurance Fund	\$48,222.59	(SEAL) NATIONAL LABOR RELATIONS BOARD	
Retirement Fund	\$7200.54		